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MONTANA LEGISLATIVE HISTORY

Chapter 59 19 91

Bill H 140 S _____ Original bill & history ✓C

H. Committee on Labor + Employment Relations		S. Committee on State Administration	
Hearing Date(s) Jan 22	✓C	Hearing Date(s) Feb 06	✓C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Jan 22	✓C	Feb 06	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 140

INTRODUCED BY RANEY, B. BROWN, NATHE, COCCHIARELLA, BROOKE, JERGESON, O'KEEFE, T. BECK, NISBET, COBB, GRADY, MENAHAN

IN THE HOUSE

JANUARY 10, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
JANUARY 11, 1991	FIRST READING.
JANUARY 23, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 24, 1991	PRINTING REPORT.
JANUARY 26, 1991	SECOND READING, DO PASS.
JANUARY 28, 1991	ENGROSSING REPORT.
JANUARY 30, 1991	THIRD READING, PASSED. AYES, 87; NOES, 12.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 31, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
FEBRUARY 8, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 9, 1991	SECOND READING, CONCURRED IN.
FEBRUARY 11, 1991	THIRD READING, CONCURRED IN. AYES, 43; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 12, 1991	RECEIVED FROM SENATE.
FEBRUARY 21, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 140

INTRODUCED BY Carey Bob Brown WHITAS Cocchiarella Brooke Jerguson O'Kelly Earl Nisbet Menahan Lab Dial

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A STATE OFFICER OR STATE EMPLOYEE SOLICITING OR ACCEPTING EMPLOYMENT, OR ENGAGING IN COMMUNICATIONS OR MEETINGS TO CONSIDER EMPLOYMENT, WITH A PERSON WHOM HE REGULATES TO NOTIFY HIS SUPERVISOR; AND AMENDING SECTION 2-2-121, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency; or

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in communications or meetings to consider employment, with a person whom he regulates in the course of his official duties without first notifying his supervisor.

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 2-2-131.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee."

-End-

1/26	2ND READING PASSED	82	7
1/30	3RD READING PASSED	90	8
	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO STATE ADMINISTRATION		
2/06	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED		
2/09	2ND READING CONCURRED	35	10
2/11	3RD READING CONCURRED	41	7
	RETURNED TO HOUSE		
2/23	SIGNED BY SPEAKER		
2/25	SIGNED BY PRESIDENT		
2/25	TRANSMITTED TO GOVERNOR		
2/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 58	EFFECTIVE DATE: 7/01/91	

HB 139 INTRODUCED BY RANEY, ET AL.

EXTENSION OF MORATORIUM ON INTERSTATE TRANSPORT OF SOLID WASTE

BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

1/10	INTRODUCED		
1/10	REFERRED TO NATURAL RESOURCES		
1/11	FIRST READING		
1/18	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/26	2ND READING PASSED	80	11
1/30	3RD READING PASSED	85	13
	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO NATURAL RESOURCES		
3/06	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED AS AMENDED	46	4
4/04	3RD READING CONCURRED	42	8
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS NOT CONCURRED	83	15
4/09	FREE CONFERENCE COMMITTEE APPOINTED		
4/18	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	4
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	85	13
	SENATE		
4/16	FREE CONFERENCE COMMITTEE APPOINTED		
4/18	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	25	18
4/20	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	36	11
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 649	EFFECTIVE DATE: 10/01/91	

HB 140 INTRODUCED BY RANEY, ET AL.

REQUIRE STATE EMPLOYEE TO NOTIFY SUPERVISOR OF JOB OFFER BY REGULATED PERSON

1/10	INTRODUCED		

1/10	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/11	FIRST READING		
1/22	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/26	2ND READING PASSED	79	10
1/30	3RD READING PASSED	87	12
	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO STATE ADMINISTRATION		
2/06	HEARING		
2/08	COMMITTEE REPORT—BILL CONCURRED		
2/09	2ND READING CONCURRED	35	12
2/11	3RD READING CONCURRED	43	5
	RETURNED TO HOUSE		
2/23	SIGNED BY SPEAKER		
2/25	SIGNED BY PRESIDENT		
2/25	TRANSMITTED TO GOVERNOR		
2/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 59	EFFECTIVE DATE: 10/01/91	

HB 141 INTRODUCED BY HARRINGTON, ET AL.
PROVIDE UNEMPLOYMENT INSURANCE BENEFITS FOR NONPROFESSIONAL SCHOOL EMPLOYEES

1/10	INTRODUCED		
1/10	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/11	FIRST READING		
1/11	FISCAL NOTE REQUESTED		
1/17	FISCAL NOTE RECEIVED		
1/18	FISCAL NOTE PRINTED		
1/24	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	TAKEN FROM PRINTING AND REREFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	60	37
2/26	3RD READING PASSED	72	28
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/19	HEARING		
4/02	MOTION FAILED TO ADOPT MINORITY DO PASS COMMITTEE REPORT	23	26
4/02	MAJORITY ADVERSE COMMITTEE REPORT ADOPTED	27	23

HB 142 INTRODUCED BY SWYSGOOD, ET AL.
CREATE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET
BY REQUEST OF POSTSECONDARY EDUCATION STUDY COMMITTEE

1/10	INTRODUCED		
1/10	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/11	FIRST READING		
1/21	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/31	2ND READING PASSED	91	7
1/31	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
2/14	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/05	2ND READING PASSED AS AMENDED	83	13
3/07	3RD READING PASSED	84	13

HEARING ON 140

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, House District 82, distributed **EXHIBIT 1 & 2**

Proponents' Testimony:

Stan Bradshaw, Trout Unlimited, stated an incident that happened in the past year suggested a void in the code of ethics. An employee of the Water Quality Bureau while investigating a violation of water quality, entered negotiations for a job with the company he was investigating. The employee finished his investigation and then went to work for the company. The Water Quality Bureau initiated enforcement action for the water quality violation. Their primary, if not sole witness, was working for the company against whom they were seeking action. This bill provides a notification provision so a state agency has a chance to make an adjustment.

C.B. Pearson, Executive Director of Common Cause in Montana, stated support for HB 140 with the "in writing" amendment. **EXHIBIT 3**

Opponents' Testimony: none

Questions From Committee Members:

REP. SONNY HANSON said to **REP. RANEY,** there are several cases where at an association meeting a person will say "you're tired of working for the Highway Department; why don't you come and work for me." Then it evolves and there's no specific meeting. The bill reads as if it's addressing a specific meeting. There could be many casual meetings or communications that would be in violation of this that would restrict normal flow of conversations. **REP. RANEY** said that if ethics are being practiced in government, that person would then turn to the individual making the offer and say that he would like to talk about it and is going to notify his supervisor. **REP. HANSON** said it reads "without first notifying." In other words, it's an offhanded conversation. The minute that an outside employer makes the discussion, he is in violation. **REP. RANEY** said yes. The language says that the solicitor accept employment or engage in communications or meetings to consider employment. A casual conversation saying I would like you to work for me would not be the same thing.

REP. STEVE BENEDICT said to **REP. RANEY** an employee might visit about a potential job and then decide against it, he certainly wouldn't want to jeopardize his position with the supervisor. **REP. RANEY** said if a person enters into a discussion then the role is reversed. Instead of being obligated to the employer, the person would be obligated to someone who is not his employer. If a person wants to work in the regulatory agencies in Montana

then there is now a new restriction. The bill does not prevent a person from seeking another job; it says if a person is going to, he must first notify his supervisor.

REP. HANSON stated to **REP. RANEY** a case where an individual requested a job interview, and his boss found out about it and immediately terminated him. A situation is then created where the employee would not be considered for further advancement. **REP. RANEY** said he didn't think that would take place in Montana government, especially when literally everybody is looking for another job because of the pay. This bill only has to do with a regulator seeking a job with someone he regulates. That's a small amount of people in the government. For example, if an employee works in Fish and Game and he is a biologist working fish projects and somebody wants him to work in the coal fields, that is not somebody he's regulating. That employee does not have to notify his supervisor.

REP. DOLEZAL asked **REP. RANEY** if the power in the bill would be diminished if the portion "or engage in communications or meetings" on lines 8 and 9 of Page 2 were deleted. **REP. RANEY** said it would. That is how a job is obtained. It would leave a loophole that the bill is trying to close.

Closing by Sponsor:

REP. RANEY closed HB 140.

HEARING ON 68

Presentation and Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, stated this bill returns Montana to the pre-1985 law that was passed when the unemployment insurance trust fund was at a crisis point. Part of the compromise to remedy the problem of not enough money in the trust fund and recognizing that relief had to be given to employers and their rates was the elimination of benefits to workers that were involved in a labor dispute with their employer where there was not a stoppage of work. In Montana the trust fund has been returned since 1980 to the highest level ever. It is time to remove the restriction that was placed on eligibility for unemployment benefits in that 1985 compromise. The fiscal note shows the impact estimated at $40,000 per year and will not significantly impact the $90 million trust-fund balance. It is a fairness bill. If there is a labor dispute with an employer and the employees are required to go on strike to make their point, under the current law they lose their entire livelihood. Even though there is not a stoppage of work and the employer is continuing to operate and derive economic benefit, there is very little incentive for employers to bargain with the employees out on strike. Generally the employer has substantial resources and the employees have limited resources. Only in limited cases, where there is not a stoppage of work and the employer is

not to take any of the employees in but imported people from other hospitals that were employed by the same company that managed the Missoula Community Hospital. Her people applied for unemployment almost immediately upon strike and did not receive it until one day before Christmas. There were over 100 RN's and 56 LPN's that also went on strike. The hospital census on a weekly basis fluctuated from 53 to 58. Employment has to be impacted by approximately 20 percent. The hospital never went down to 20 percent; they continued to operate at that 53 to 58 percent census. Therefore, that business continued to operate on almost a full scale without having respect for those workers who wanted to work for them. **CHAIR SQUIRES** stated that she supported HB 68. The hospital chose not to use the workers out on strike when they offered. The neo-natal unit stayed open and those employees were considered "our people" because there were no other neo-natal nurses. Intensive Care Unit nurses would have been provided but the employer chose not to use them. They chose to use other people and bedded them down with 12 hour shifts, fed them, etc.

REP. JOHNSON that he was not sure that HB 68 addresses that particular problem. He is concerned about keeping those employers in business. For instance, when there was a strike at the Sheraton Hotel in Butte, he hoped the strikers didn't put it out of business because that business was needed in Butte. This bill does not take care of non-profit corporations.

REP. BENEDICT said the issue is whether there is a subsidizing of striking. REP. WHALEN said there was no incentive to strike with low benefits. He failed to say there are union strike funds to go along with unemployment benefits. When they are put together it's not a bad package. **REP. BENEDICT** said he is in favor of HB 68 because it represents the 85 percent of employers that don't have anything to do with a problem that exists between an employee and an employer.

REP. SOUTHWORTH stated that he was part of the 1984 Cenex strike and supports this bill.

REP. THOMAS encouraged voting no. This should not be under unemployment insurance, which is for people who are unemployed through no fault of their own.

Vote: Motion carried 11 to 7. **EXHIBIT 9**

EXECUTIVE ACTION ON 140

Discussion:

REP. O'KEEFE moved to adopt amendments to HB 140. Motion carried unanimously.

REP. HANSON stated he had an additional amendment to replace the word "communications" with "negotiations" on line 9. **Ms.**

McClure, Legislative Council, said she would draft an amendment and incorporate it into the previous amendment. **EXHIBIT 10**

Motion/Vote: **REP. HANSON** moved to adopt the amendment to HB 140. The motion carried 14 to 3 with **REPS. O'KEEFE, DOLEZAL, AND SQUIRES** voting no.

Motion/Vote: **REP. JOHNSON MOVED HB 140 DO PASS AS AMENDED.** Motion carried unanimously.

ADJOURNMENT

Adjournment: 5:45 p.m.

Carolyn Squires, Chair

Jennifer Thompson, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 01/22/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA			✓
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN			
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

CS05COM.man

HOUSE STANDING COMMITTEE REPORT

January 22, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 140 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.
Following: "IN"
Strike: "COMMUNICATIONS"
Insert: "NEGOTIATIONS"

2. Title, lines 7 and 8.
Following: "TO" on line 7.
Insert: "FIRST"
Following: "SUPERVISOR" on line 8.
Insert: "AND DEPARTMENT DIRECTOR IN WRITING"

3. Page 2, line 9.
Strike: "communications"
Insert: "negotiations"

4. Page 2, line 11.
Following: "first"
Strike: "notifying"
Insert: "giving written notification to"
Following: "supervisor"
Insert: "and department director"

EXHIBIT 1
DATE 1/22/91
HB 140

House Bill 140
State Employee Seeking Employment
With A Person or Persons He/She Regulates
January 22, 1991

Purpose - To provide in statute that a person employed by the State of Montana in a position where he/she regulates other people under Montana law, must first notify his/her supervisor and Department Director, in writing, before commencing any activity seeking employment with the person he/she regulates.

Reason - Government should not only be open and trustworthy, it should appear that way as well. This act will help reduce suspicion of state employees employed in regulatory positions and give government a better image. This is not to say that any present employee is engaged in any suspect activity, but to show our determination that such activity does not take place.

Bob Ramirez

EXHIBIT 2
DATE 1/22/91
HB 140

Amendments to House Bill No. 140
First Reading Copy

Requested by Representative Raney
For the Committee on House Labor and Employee Relations

Prepared by Eddye McClure
January 14, 1991

1. Title, lines 7 and 8.
Following: "TO" on line 7.
Insert: "FIRST"
Following: "SUPERVISOR" on line 8.
Insert: "AND DEPARTMENT DIRECTOR IN WRITING"

2. Page 2, line 11.
Following: "first"
Strike: "notifying"
Insert: "giving written notification to"
Following: "supervisor"
Insert: "and department director"

EXHIBIT 3
DATE 1/22/91
HB 140

Common Cause montana

P.O. Box 623
Helena, MT
59624
406/442-9251

TESTIMONY OF COMMON CAUSE/MONTANA

IN SUPPORT OF HOUSE BILL 140

22 JANUARY 1991

Madame Chairwoman and members of the House Labor and Employment Relations Committee for the record my name is C.B. Pearson, Executive Director of Common Cause in Montana. Common Cause/Montana represents Montanans who want open, accessible and democratic government in Montana.

On behalf of the members of the organization we would like to speak in support of House Bill 140 and add what we believe to be a friendly amendment.

We would ask that at the end of Section (2) (f) the following be added: "in writing".

We believe that HB 140 is a good government reform. HB 140 helps increase public confidence in public officials and government. It helps ensure that those who work for the public will place the public's interest above their own interest and above private interest. This bill provides needed guidance to employees who may find themselves in a compromising position. It is a good addition to Montana's existing conflict of interest statutes.

We urge a "do pass" on House Bill 140.

EXHIBIT 10
DATE 1/22/91
HB 140

Amendments to House Bill No. 140
First Reading Copy

Requested by Representative Raney
For the Committee on House Labor and Employee Relations

Prepared by Eddye McClure
January 14, 1991

1. Title, line 6.
Following: "IN"
Strike: "COMMUNICATIONS"
Insert: "NEGOTIATIONS"

2. Title, lines 7 and 8.
Following: "TO" on line 7.
Insert: "FIRST"
Following: "SUPERVISOR" on line 8.
Insert: "AND DEPARTMENT DIRECTOR IN WRITING"

3. Page 2, line 9.
Strike: "communications"
Insert: "negotiations"

4. Page 2, line 11.
Following: "first"
Strike: "notifying"
Insert: "giving written notification to"
Following: "supervisor"
Insert: "and department director"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Labor & Employment Relations COMMITTEE BILL NO. 140

DATE 1/22/91 SPONSOR(S) Bob Ramirez

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
C.D. Pearson	Common Cause/Montana	HB 14		✓
Jim Jensen	MEIC	HB 140		✓
Stan Bradshaw	Montana Trial Lawyers	140		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Recommendation and Vote:

Senator Blaylock moved that we DO CONCUR IN HOUSE BILL 138. The VOTE was UNANIMOUS in favor of concurring in House Bill 138. Senator Gage is a sponsor so we'll ask him to carry it.

HEARING ON HOUSE BILL 140

Presentation and Opening Statement by Sponsor:

Representative Bob Raney, House District 82, Livingston, said House Bill 140 requires a state officer or state employee soliciting or accepting employment, or engaging in negotiations or meetings to consider employment, with a person whom he regulates to first notify his supervisor and department director in writing. The entire bill is on page 2, lines 10 through 14.

Proponents' Testimony:

Stan Bradshaw is here in behalf of Trout Unlimited. Much of the fisheries protection that they value resides in the state's regulatory agencies, such as the Water Quality Bureau, the Health Department or the Department of State Lands Mining Bureau. He told of an employee of the Water Quality Bureau was investigating the company for water pollution incident. Well into the investigation his supervisor learned he was negotiating for employment with the company that he was investigating. The employee left the state department and went to work for this company, and the chief witness for the company was that particular person. This bill is important to public confidence in the quality of protection of laws. That employees involved in regulatory jobs avoid even the appearance of a conflict or impropriety. This bill is a balance between the employees right to seek other employment outside state government and the agencies need to maintain integrity and enforcement. Please support House Bill 140.

Jim Jensen, Executive Director of the Montana Environment Information Center, said his work has much to do with Mining Regulations. The mining industry pays good salaries and state employees leave the Department of State Lands to work for the private sector for companies the Department of State Lands regulates. He has not had the experience related above, but the appearance of employees on different sides of the issue makes the general public suspicious. This bill should prevent the appearance of conflict or impropriety. He supports House Bill 140.

C. B. Pearson, Executive Director of Common Cause, supports House Bill 140. This helps increase public confidence in officials in government. Those who work for the public should place public interest above their own and above private industry.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Fritz asked if there is a penalty. Representative Raney said just embarrassment. There are no provisions for penalty. This is an affront.

Senator Farrell asked about law enforcement officers who work part time in security situations? They should notify their Department.

Stan Bradshaw said this bill applies to a person who is working for someone he is regulating. The supervisor should be aware of what that officer is doing.

Farrell asked if there is a violation of employee rights? Stan Bradshaw responded we are not restraining his right to seek, but find a balance between his rights and the integrity of the situation.

Senator Farrell asked Steve Pilcher an attorney for the Montana Department of Health and Environmental Sciences about employee rights. Mr. Pincher responded that a department entrusts all the knowledge of an investigation in their assigned employees and then when negotiations began to resolve the violation he was on the other side of the table. There are provisions to provide notification to supervisor, then he can decide whether to reassign that individual if there is a perception of conflict of interest.

Senator Farrell asked how do you determine when they are "engaged" in negotiations? What if a company called the department and said your employee has asked for employment with us? Jim Jensen responded that solicit is in the language. The supervisor has to make decisions regarding employees all the time. This law relies on the good faith of the employee, and this will put an obligation on him. If an employee wants to cheat on this, he will probably get away with it.

Senator Pipinich asked if this bill is just a help to the departments? Representative Raney believes our system functions better than that. Senator Burnett thinks that supervisors should know their employees, their integrity, and their assignments and make the regulation at the time of employment.

Closing by Sponsor:

Representative Raney said this doesn't cover many employees. It covers those involved in regulatory positions. They can pursue employment. The employer has the right to know if they are searching for work with the person they are investigating.

EXECUTIVE ACTION ON HOUSE BILL 140

Motion:

Senator Burnett moved we DO NOT CONCUR in House Bill 140 is because the agencies themselves can make that regulation at any time and this doesn't need to be a law.

Discussion:

Senator Farrell talked about there not being a penalty clause. Is putting a letter in an employee's file to be used against them, violating Montana law. Isn't that against their rights?

Senator Blaylock mentioned the revolving door on the federal level, particularly with the defense department, who are dealing constantly with contractors, multibillion dollars and then go directly to work for them. The federal government says they can't go to work for them for 1 year after they leave the department.

Senator Farrell talked about a state employee being wrongly accused with this bill.

Attorney Niss said the first question of whether the law as written violates the employee's right to privacy. The other issue is the procedural issue of how does the agency make that determination and what procedure do they use to put that letter into the file. State regulations require that any agency has to offer an employee a hearing and a fact finding procedure. The director simply makes the decision after the hearing. The legal issue is, does this violate an employee's right to privacy? If the agency follows the correct disciplinary procedure to put the letter into the file, there is no legal violation. An employee has a right to privacy under the 9th Amendment to the Constitution.

Senator Blaylock said this bill does not stop them from doing anything. They can open negotiations for employment. All they have to do is tell their employer.

Senator Burnett said this is a wasted effort. Senator Farrell talked about a person retiring and going to work for a private company he had investigated. Senator Fritz said he no longer had a file to put a letter into anyway. Senator Farrell said allegations against a person are a pretty serious thing.

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The ROLL CALL VOTE was 4 in favor of DO NOT PASS House Bill 140; and Senators Blaylock, Rea, Pipinich and Vaughn, opposed. The bill does not have any action.

HEARING ON HOUSE BILL 205

Presentation and Opening Statement by Sponsor:

Representative Ervin Davis, House District 53, said House Bill 205 is requested by the Teachers' Retirement Board.

Proponents' Testimony:

David Senn, Executive Secretary of the Teachers' Retirement System, said House Bill 205 allows transfer of funds between Public Employees' Retirement System and Teachers' Retirement System. The members accounts were always transferred, but employer contributions and interest were not transferred. Before 1989 there were very few dollars transferred between systems. Teachers can retire after 25 years service at any age with full benefits. Some PERS members would leave that system and go to TRS so their benefits would be full at 25 years service. That is a hugh liability for a retirement system to assume, the 2 systems developed a formula for funds transferring. Individuals who transferred over to TRS had to pay 2% per year of service. They had worked with an actuary to develop a refined formula. This bill deletes the additional cost for any individual. If a person withdraws from PERS and goes to TRS he must redeposit the same as he withdraws. Then from the pool 72% of that individual's account balance will be transferred to TRS. This bill is retroactive to October 1, 1989 and anyone who has paid additional contributions will have a refund coming. Please support House Bill 205.

Larry Nachtsheim, Director of the Public Employees Retirement System, believes this is a good bill and both retirement systems have worked out this agreement.

Leroy Schramm, Montana University System, has a few people transfer from PERS to TRS each year as they become eligible to do so. The promotion had the effect of forcing them to carry over all their PERS and pay the 2% to do so, or they could start all over in TRS plan. This bill will allow them to move between the two plans without penalty. This is a more just solution to that problem.

ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE Feb. 6, 1991

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ELEANOR VAUGHN			excused
SENATOR BOB PIPINICH	X		
SENATOR JOHN ANDERSON	X		
SENATOR CHET BLAYLOCK	X		
SENATOR JAMES BURNETT	X		
SENATOR "BILL" FARRELL	X		
SENATOR HARRY FRITZ	X		
SENATOR BOB HOCKETT			
SENATOR JACK "DOC" REA			excused
SENATOR BERNIE SWIFT			excused

Each day attach to minutes.

DATE February 6, 1991

COMMITTEE ON Bldg. Administration

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
GENE KISER	MBCC	HB138	✓	
yle Nagel	Mt. St. Ltd. Firefighters Assn Mt. St. Fire Chiefs Assn	HB138	✓	
ary L. Olson	Mt State Prof Firefighters Assn	HB138	X	
Ridge Worrington	Great Falls PD	HB138	✓	
Joyce Bene	dispatch [illegible]	HB138	X	
Larry Petersen	Mt Dept Admin	HB138	✓	
Ted Hyser	MT Fire Mfg. Academy	HB138	✓	
Stan Bradshaw	Trout Unlimited	HB140	✓	
T.B. Pearson	Common Cause/ Montana	HB 140	✓	
Jim Jensen	MEIC	HB 140	✓	
DOW DAWSON	EMS Bureau, Dept Health	HB138	✓	
Steve Pilcher	MT. Dept. of Health & Env. Sci.	HB 140		
Larry Mackbeim	PERD	HB205	✓	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE STATE ADMINISTRATION

52st LEGISLATIVE SESSION

Date Feb 6 Bill No. HB 140 Time 10:15

NAME	YES	NO
Chairman Eleanor Vaughn		X
Vice Chairman Bob Pipinich		X
Senator John Anderson	X	
Senator Chet Blaylock		X
Senator James Burnett	X	
Senator "Bill" Farrell	X	
Senator Harry Fritz	X	
Senator Bob Hockett		X
Senator Jack "Doc" Rea		X
Senator Bernie Swift	X	

Dolores Harris
Secretary Dolores Harris

Chairman Eleanor Vaughn

Motion: Senator Burnett moved do not concur in House Bill 140.

1985

SENATE STANDING COMMITTEE REPORT

February 6, 1991

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill No. 140 (third reading copy -- blue), respectfully report that House Bill No. 140 be not concurred in.

Signed: _____
Bob Pipinich, Vice Chair

2-6-91
Amd. Coord.

2-6 2:45
Sec. of Senate